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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,284	07/03/2003	Robert D. Hutchison	11-931	5800
23117	7590	10/03/2006		
NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203			EXAMINER JUSKA, CHERYL ANN	
			ART UNIT 1771	PAPER NUMBER

DATE MAILED: 10/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/612,284	HUTCHISON, ROBERT D.	
	Examiner	Art Unit	
	Cheryl Juska	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20,22 and 23 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6,8-20,22 and 23 is/are rejected.
- 7) ☒ Claim(s) 7 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed July 17, 2006 has been entered. New claims 22 and 23 have been added as requested. Thus, the pending claims are 1-20, 22, and 23.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 5 and 14 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention for the reasons set forth in sections 5-7 of the last Office Action.

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 22 and 23 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. New claims 22 and 23 limit the soiling-hiding yarn and the soiling-prone yarn to having the same chemical composition but different cross-section. While the specification

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teaches like materials for both the soiling-hiding yarn and the soiling-prone yarn, the specification as originally filed does not provide support for the full scope of the new claims. in particular, the specification does not provide support for any and all like chemical compositions, but rather just those disclosed in the specification. Additionally, the specification does not provide for the concept of the yarns having the same composition but different cross-sectional shapes.

Claim Rejections - 35 USC § 102

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 1, 6, 8-13, 15, 19, and 20 stand rejected under 35 U.S.C. 102(b) as being anticipated by US 4,961,243 issued to Barber as set forth in section 9 of the last Office Action.

Claim Rejections - 35 USC § 103

8. Claims 2-5, 14, and 16-18 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Barber patent as set forth in section 11 of the last Office Action.

Allowable Subject Matter

9. Claim 7 stands objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims as set forth in section 12 of the last Office Action.

Response to Arguments

10. Applicant's arguments filed with the amendment have been fully considered but they are not persuasive.

11. Applicant traverses the 112, 2nd rejection by stating the following:

The Examiner contends that a person can visually distinguish a hollowfil fiber from a multilobal fiber and, therefore, the claims are indefinite. In support, the Examiner cites to applicant's Figures 3-5. Respectfully stated, the Examiner is incorrect. As specifically set forth in the specification, Figures 3-5 are "enlarged" views of certain aspects of the claimed invention. See, e.g., the term "enlarged" in paragraphs 12 and 13. "Enlarged" means that they have been demonstrably enlarged or magnified as though by mechanical means. "Visually distinguish" (as used in the claims) is not the same as "enlarged" by mechanical means or other means. "Visually distinguish" means with the naked eye. The naked eye cannot "visually distinguish" a hollowfil fiber from a multilobal fiber in the claimed fabric, and there is no evidence of record to the contrary. In fact, it would take a person with superman-like powers or a magnifying device to be able to distinguish the claimed fibers. As a result, applicant respectfully requests the withdrawal of the Section 112 rejection.

12. The examiner respectfully disagrees. First, the examiner never intended to suggest that Figures 3-5 were to scale. Figures 3-5 were noted as showing "differences in structure between the two yarns" (last Office Action section 7). In other words, said Figures were relied upon to show that differences in cross-sectional shapes *existed* between the hollowfil fiber and the multilobal fiber. It was also asserted that said differential shapes are "visually distinguishable." Contrary to applicant's assertion, the term "visually distinguish" is not limited to being viewed by the naked eye. Since applicant did not set forth an explicit definition for said term in the specification, said term is interpreted in its broadest reasonable sense. In particular, "visually distinguishable" is interpreted as any differences that are identifiable by sight, whether by the naked eye or not.

13. Additionally, in response to applicant's assertion that one must have "superman-like powers or a magnifying device" to be able to distinguish the claimed fibers, the examiner contends that this statement is limited to finer denier fibers. In other words, the ability to visually distinguish a fiber's cross-section is somewhat dependent upon said fiber's denier or diameter. Since applicant is not claiming any particular denier range, it cannot be said with certainty that the hollowfil and multilobal fibers are not "visually distinguishable." Therefore, applicant's arguments are found unpersuasive and the 112, 2nd rejection is hereby maintained.

14. Applicant traverses the Barber rejections by asserting that Barber is directed to cleaning pads for rotary machines, while the present invention relates to "fabrics that can be used in carpeting" (Amendment, page 7, 1st paragraph). This argument is unpersuasive because the features upon which applicant relies (i.e., fabrics that can be used in carpeting) are not recited in 1-12, 15-18, 22, and 23. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Only claims 13, 14, 19, and 20 recite "carpet." Additionally, as noted in the last Office Action, 2nd paragraph, page 5, the term "carpet" is merely descriptive of an intended use as a textile material. Said term does not necessarily limit the structure of the fabric in any way. Furthermore, even if the term "carpet" is given an implied meaning of a conventional carpet construction (i.e., pile yarns secured into a primary backing and a backcoat), it is noted that Barber teaches pile yarns tufted into a primary backing and a backcoat.

15. Applicant also argues that Barber's main objective is to "provide a cleaning pad with good scrubbing properties that more fully retains dirt within the pad" (Amendment, page 7, 2nd

paragraph). As such, applicant believes that the blended yarn [30] does not teach the presently claimed feature that some yarns are not as good as others at retaining dirt which result in “visually distinguishable” yarns (Amendment, page 7, 3rd paragraph). In response, it is argued that the teaching of the pad “more fully” retaining dirt within the pad is descriptive of the overall pad and not the individual yarns [32, 34, and 36] or the blended yarn [30]. Also, note that this teaching of “more fully” is a relative teaching.

16. Barber teaches the individual yarns are made up of wool or acrylic, nylon, and rayon. In the description of the individual yarns, Barber discusses the dirt retention of the wool or acrylic yarn and the rayon yarn (col. 2, lines 30-67). Barber is silent with respect to the nylon yarn retaining dirt. Hence, the nylon yarn has different soiling characteristics than the acrylic or wool yarn and the rayon yarn. Therefore, contrary to applicant’s assertion (Amendment, page 8, 2nd paragraph) this feature of applicant’s claim is taught by the Barber reference.

17. Additionally, the examiner’s arguments with respect to “visually distinguishable” as presented above are also applicable in response to applicant’s assertion that Barber does not teach this feature (Amendment, paragraph spanning pages 7-8).

18. Applicant argues that the blended yarns of Barber being tufted next to each other are the “antithesis of the claimed invention that requires a different yarn running next to an initial yarn” (Amendment, page 8, lines 1-3). Once again, applicant is arguing features which are not claimed. None of the claims except claim 7 even suggest location of the yarns in the fabric, much less requiring “a different yarn running next to an initial yarn.”

19. In response to applicant’s argument that the “side-by-side blended yarns 30 in Figure 2 [of Barber] do not provide the visually distinguishable soil-prone yarn and soil-hiding yarn of the

claimed invention” (Amendment, page 8, 1st paragraph), it is noted that the present claims do not exclude a blended or plied yarn comprising three individual yarns. Nor do the present claims, with the exception of claim 7, exclude the yarns being located in a side-by-side relationship.

20. Regarding the 103 rejection over Barber, applicant traverses by arguing that one would not be properly motivated to use the presently claimed combination of hollowfil and multilobal yarns (Amendment, paragraph spanning pages 9-10). The examiner respectfully disagrees.

Specifically, it would have been obvious to select the varied cross-sections for two of the three yarns of Barber’s blended yarn in order to enhance the cleaning capability of the cleaning pad.

Therefore, applicant’s arguments are found unpersuasive and the above rejections are maintained.

Conclusion

21. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

22. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

24. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


CHERYL A. JUSKA
PRIMARY EXAMINER